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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1993

Addendum

UNITED REPUBLIC OF TANZANIA*

[6 February 1997]

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* For the second periodic report submitted by the Government of the United Republic of Tanzania, see CCPR/C/42/Add.12; for its consideration by the Committee, see CCPR/C/SR.1189 to SR.1191 and Official Records of the General Assembly, Forty-eighth session, Supplement No. 40, (A/48/40), paras. 146-189.

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Introduction

1. This is the third report being submitted by the Government of the United Republic of Tanzania in accordance with article 40 (1) of the International Covenant on Civil and Political Rights. The report updates and complements the initial report submitted in 1979 (CCPR/C/1/Add.48) and the second periodic report submitted in 1991 (CCPR/C/42/Add.12). This report has been prepared in accordance with the guidelines issued by the Human Rights Committee.

2. Since the second report there have been some major political changes in the country which in turn have led to some amendments to the Constitution of the country. The major political changes started with the reintroduction of the multiparty system in 1992 and culminated with the holding of multiparty elections in October 1995. In March 1991 a Presidential Commission was established and given the job of getting views from Tanzanians on whether to maintain a single party system or establish a multiparty system in Tanzania. The 1992 Presidential Commission's report on the democratic system found that more than 80 per cent of Tanzanians wanted to retain the single party system. Despite this overwhelming view in favour of maintaining the single party system the Commission (known as the Nyalali Commission after the Chairman, Chief Justice F. Nyalali), still recommended that the country return to multiparty rule. This decision was strongly influenced by overwhelming political changes which were taking place all over the world and within countries neighbouring Tanzania.

3. That recommendation was accepted and the Government had to amend the Constitution so as to provide for the introduction of multiparty politics and to remove all references to the ruling party and single party wherever they appeared in the provisions of the Constitution. This was done through the eighth amendment to the Constitution which became effective in July 1992.

4. Furthermore, the ninth, tenth and eleventh constitutional amendments were made in an attempt to introduce political pluralism in Tanzania. The ninth amendment of 1992 made further changes to the Constitution so as to effect new regulations in the presidential elections as well as to clarify presidential powers. The tenth amendment of 1993 changed the law so as to provide powers to the National Election Commission to organize and supervise the local council elections. The eleventh amendment of 1994 effected changes to the law with regard to the Vice-President, and increased the Members of Parliament.

5. In 1992 the Political Parties Act No. 5 of 1992 was passed. It provides the terms, conditions and procedure for the registration of political parties. A political party is defined in the Act as an organized group formed for the purpose of forming a government or local authority within the United Republic of Tanzania through elections, or for putting up or supporting candidates to such elections. A Registrar of political parties was appointed. In the beginning a total of 23 political parties applied for provisional registration. However, some of them could not meet the conditions for permanent registration and only 13 attained full registration.

6. The Nyalali Commission also had the opportunity of going through the laws of the country. Some of the legislation had been inherited from the colonial administration at independence and very few changes had been made to it. The Commission found that some of the laws had to be reviewed and some had to be repealed outright so as to respond to people's rights in a democratic society. The Nyalali Commission recommended that the Tanzania Law Reform Commission should be entrusted with the task of going through those laws and recommend what was to be done. The Law Reform Commission has therefore been entrusted with this responsibility. The present report will refer to some of the legislation pointed out by the Nyalali Commission.

INFORMATION CONCERNING THE APPLICATION OF ARTICLES 1-27 OF THE COVENANT

Article 1

7. As indicated in the previous two reports Tanzania is a firm believer in the principle of the right of peoples to self-determination. Article 20 (1) of the Constitution of the United Republic of Tanzania provides amongst others, the freedoms of free expression and association - the establishing or joining of parties or associations meant to conserve one's faith, belief or other interests. Article 20 (2) further provides restriction on the registration of political parties which are based on religion, tribalism, or based on only one region of the country. Article 20 (4) prohibits the forcible enrolment of any person in any political or other party or association, and provides that no political party shall be refused registration on the basis of its ideology or philosophy.

8. On the economic side, the Constitution of the United Republic of Tanzania provides, under article 24 (1) and (2), that every person has the right to own or hold any property lawfully acquired and that in pursuance of this right no one shall be arbitrarily deprived of his property for purposes of acquisition without the authority of the law which must set out conditions for fair and adequate compensation.

9. In compliance with article 1 (2) of the Covenant people are allowed to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation. For example, in the past people were required to sell their crops to some particular bodies without any choice. Some of those bodies ran into financial difficulties and farmers were forced to sell their crops on credit. This has been rectified with the liberalization of the economy as a result of which small-scale miners and farmers, for example, can sell their products on the open market.

10. Tanzania's position on the defence and promotion of the right to self-determination and independence has always been unwavering. Tanzania's contribution was pivotal in the liberation of Angola, Mozambique, Zimbabwe, Namibia and, recently, South Africa. Tanzania still supports the struggle for self-determination of the Palestinians and people of Western Sahara, as well as of other Non-Self-Governing Territories and people.

11. Tanzania is a member of the Southern Africa Development Community. SADC was established to coordinate regional cooperation among countries of

southern Africa and lessen dependence on apartheid South Africa. After the eradication of the apartheid system and the emergence of a democratic South Africa the nature of SADC changed. It is hoped that as a new member of SADC, South Africa, with its developed economy and know-how, will be the engine of economic growth and development of the region.

Article 2

12. The Constitution of the United Republic of Tanzania incorporates all rights provided for in the Covenant. The Bill of Rights, which is in the third section of the first chapter of the Constitution, incorporates all the important rights. The section also provides for the obligations attendant to the enjoyment of these rights.

13. Sections 12 and 13 of the Constitution provide for equality of all persons before the law regardless of race, colour, sex, language, tribe, political or other opinion, national or social origin, property, birth or other status. The sections recognize peoples' entitlement to recognition and respect of their dignity. The right to life is recognized under section 14 while that to personal freedom is under section 15 (1). Sections 16 and 17 recognize the rights to privacy, personal security and freedom of movement. Section 18 guarantees the right to freedom of expression while section 19 (1) provides for the right of freedom of religion.

14. Sections 22 and 23 of the Constitution of the United Republic of Tanzania guarantee every person the right to work and the right to fair remuneration for the work performed. Every citizen is entitled to the same opportunity and rights, on an equal basis, to hold any position and function under the State. However, as stated in the previous report, despite the establishment of employment promotion centres to advertise possible employment openings available to individuals, it is not yet to guarantee every person an opportunity to work.

15. The problem has been compounded by the difficult economic conditions facing the country and the economic restructuring which has shrunk the job market. As the private sector grows it is expected that it will spur job creation.

16. Any persons whose rights and freedoms as recognized in the Bill of Rights of the Constitution are violated shall have an effective remedy by the way of petition to the High Court of Tanzania as provided under article 30 (3) of the Constitution. Such people may also resort to writs of habeas corpus and court decrees of certiorari and mandamus. It would be easy to enforce remedy as it would emanate from the High Court of Tanzania.

17. The Constitution of the United Republic does not discriminate on the basis of nationality. Articles 13, 14 and 15 provide in general terms the rights to life, equality and freedom which are accorded to everyone. Article 13 (2) provides that no law legislated in Tanzania shall be discriminatory. In defining discrimination article 13 (5) includes nationality as one of the aspects of discrimination which would not be

allowed under the Constitution. Article 29 (1) and (2) again repeats in general terms the rights and obligations of all people in the United Republic of Tanzania; it provides that every person has the right to basic human rights as well as equal protection under the law.

18. It is provided under section 30 (5) of the Constitution of the United Republic of Tanzania that when it is alleged in any matter or case that a law or a step taken by the Government or any authority has the effect of nullifying or diminishing the basic rights provided under sections 12 to 29 of the Constitution, and the High Court of Tanzania is satisfied that the law or the steps taken are unconstitutional, in the interest of the society, instead of declaring such law or steps as null and void the High Court has the power to provide the Government or authority concerned a chance to rectify the mistake in the law or step taken at such time or in such manner as the High Court may determine. The law in question or the step taken shall continue to be valid until either the mistake has been rectified or the period imposed by the High Court has elapsed, whichever is shorter.

19. The effect of this provision is to give sufficient remedy to the people who think that they have been victimized by any law which is unconstitutional or any steps taken against them which seem to go against their rights as provided under the Constitution.

20. Promotion of awareness of the person's rights and freedoms specified in the Covenant, including training of public authorities or dissemination of information on the Covenant, is difficult for the Government to undertake due to the difficult financial situation.

21. There are plans to establish a section in the Ministry of Justice to handle and deal with matters relating to human rights. The section is expected to play a vital role in such human rights matters as the training of public authorities and the dissemination of information on the Covenant and on the remedies available to aggrieved complainants. This role could be complemented by an independent free press.

Article 3

22. The Constitution of the United Republic of Tanzania ensures that men and women have equal rights in the enjoyment of civil and political rights as set forth in the Covenant. Section 5 (1) of the Constitution provides that every citizen of Tanzania who is over 18 years old has the right to vote in Tanzania. Under section 9 (9) all State authorities and institutions are required in undertaking their activities to ensure that they provide equal opportunity to all citizens, both men and women, irrespective of colour, language, religion or status.

23. Section 12 of the Constitution of the United Republic of Tanzania provides that all people are born free and equal. The section further provides that every person is entitled to recognition and respect for his dignity. Section 13 (1) provides that all people are equal before the law and are entitled, without any discrimination, to equal opportunity before the law

and equal protection by the law. Section 13 (2) prohibits legislative authorities in Tanzania from making any provision in law that is discriminatory on its face or in its effects.

24. As reported in the last periodic report on the issue relating to some practices which deprive women of their basic rights, there has been some progress made in eliminating those negative practices. The Land Commission as well as the Law Reform Commission of Tanzania found that some laws and practices deprived women of their basic rights, i.e. in the field of inheritance and land rights. Some of the legislation has been strongly influenced by traditional or customary rights which are generally in favour of men at the expense of women.

25. These bodies have proposed to address the situation so as to correct the imbalance. Formation of the Baraza la Wanawake wa Tanzania, or BAWATA, which is an inter-party women's organization, has been a big boost to the activities of those bodies established by the Government to undertake the review of legislation and different practices affecting the enjoyment of rights by women. BAWATA is expected to exert pressure so that the review is done promptly and efficiently.

26. During the general elections of October 1995 Tanzania witnessed the participation of women in both the parliamentary and presidential elections. Though the ratio of women participants in the political arena is still significantly small compared with that of men, yet it is a good indication of greater participation in the future.

27. Women are the backbone of the peasant agricultural sector. Peasant farming is dominated by women. In addition, women are making inroads into other sectors of the economy through cooperative arrangements in small industries like brick-making, building, poultry-keeping, animal husbandry, fishing, cloth-making, sewing and other areas traditionally dominated by men. This is not confined only to rural areas but takes place in urban areas as well.

28. Although women constitute over half of Tanzania's population of 28 million, their representation has not improved significantly from what was reported in the last periodic report. Under article 66 (1)(b) of the Constitution of Tanzania 15 per cent of parliamentary seats are specifically reserved for women.

29. There are 45 women Members of Parliament out of a total of 275 parliamentarians. There are three Cabinet Ministers, three Deputy Ministers and three Principal Secretaries in the new Government announced in late 1995 and early 1996. This is an improvement compared with what was reported in the last periodic report.

30. Customary law and cultural rights still exert a significant influence on family matters in spite of the Law of Marriage Act of 1971 being very clear on the question of equal rights between spouses. However, with the help of bodies such as the Law Reform Commission and BAWATA it is hoped that public education and sensitization will be enhanced so as to bring customary practice into conformity with the law.

Article 4

31. According to the Constitution of the United Republic of Tanzania, under certain conditions, a state of emergency can be declared by the President of the United Republic under section 32 (1). These, included as per subsection 2, include:

(a) If the country is in a state of war or in imminent danger of invasion or involvement in war;

(b) Where there is an actual breakdown of public order and public safety in any part of the United Republic of Tanzania to an extent requiring the invocation of extraordinary measures to restore peace;

(c) Where there is a clear and present danger of an actual breakdown of public order and public safety in any part of the United Republic of Tanzania and which cannot be avoided except through the invocation of extraordinary authority;

(d) Where there is imminent danger of the occurrence of some disaster or natural calamity threatening a community or part of community in the United Republic of Tanzania;

(e) Where there is some other kind of public danger which clearly constitutes a threat to the State or its continued existence.

32. Even after the above conditions have been met, under section 32 (3) the President is obliged to transmit copies of the declaration of the state of emergency to the Speaker of the National Assembly who, after consultations with the leader of government business in the House, shall convene a parliamentary session within 14 days to consider the situation and decide whether or not to pass a resolution approving the state of emergency issued by the President. A two thirds majority of the members of the meeting is required for the adoption of such a resolution.

33. Furthermore, the Parliament is empowered to enact legislation making provision for the situations and procedures whereby certain persons in charge of the functions of government in specified areas may request the President to exercise extraordinary power under this section in those areas where the state of emergency exists as well as for providing for the exercise of executive power during the period of emergency.

34. A proclamation of emergency shall cease to have effect once it is revoked by the President or if in 14 days from the date of proclamation the National Assembly has failed to pass a resolution. In any case a state of emergency automatically lapses after a period of six months or any time at which the National Assembly revokes the proclamation by a resolution supported by not less than two thirds of its members.

35. Under section 31 (1) the Constitution of the United Republic provides that any law enacted by the Parliament derogating from the provisions of

articles 14 and 15 shall not be inoperable or illegal for the reasons that it is meant to be used during a state of emergency or against persons deemed to have committed acts threatening national security.

36. The provision, however, goes on to provide, under subsection 2, that measures under subsection 1 shall not be undertaken unless it is absolutely necessary to do so under a state of emergency or in a situation where national security is justifiably threatened. No proclamation of a state of emergency in Tanzania has, however, been declared under this article.

37. One of the relevant legislations to be used in times of emergency is the Emergency Powers Act No. 1 of 1986 which is meant to provide emergency powers to the President during emergencies for the purpose of ensuring public safety and maintenance of public order. Such powers include control of institutions under section 9, control of publications under section 10, restrictions on the entry of newspapers under section 11, control of road transport, airports, harbours and territorial waters under section 13, prohibition of meetings and processions under section 14 and issuance of search warrants under section 16.

38. Section 5 of the Act allows the President to delegate these powers to regional and district commissioners or any other authorized person. Section 8 provides powers to magistrates to control suspected persons. Section 25 of the Act limits the jurisdiction of courts as well as bail while section 26 bars courts from questioning anything done by authorities under the Act.

39. The main criticism raised against this Act is that it provides for the delegation of presidential powers to other authorities who might abuse those powers. It has been suggested that these powers should never be delegated to any authority but the President himself through the Parliament. It has also been pointed out that the basic individual rights and freedoms are violated by this Act by providing the President with wide powers of arrest without trial which interfere with the basic rights provided in the Constitution. The Presidential Commission on the Democratic System in Tanzania (Nyalali Commission) has recommended that the Act should be reviewed to rectify those shortcomings.

Article 6

40. Tanzania is a peace-loving country. The prevention of wars and acts of genocide as well as the promotion of international peace and security are some of the tenets of its foreign policy. It is for this reason that Tanzania has strived to promote good neighbourliness and peace within the countries surrounding it. The Government is therefore fully involved in the process of promoting peace in the subregion and to resolving the problem of refugees.

41. In undertaking this role Tanzania is guided by the principles of and its membership in the Organization of African Unity, the United Nations and the Non-Aligned Movement. It is in this context that former President of Tanzania Mwalimu Julius K. Nyerere is working tirelessly to try and find a political solution in the neighbouring Republic of Burundi. Tanzania is also hosting the United Nations International Tribunal for Rwanda established to try people who committed acts of genocide in the Republic of Rwanda in 1994.

42. The Ministry of Health is working with the Ministry of Community Development, Women and Children and various non-governmental organizations to establish several programmes designed to reduce the rate of infant mortality, which was very high at the time of independence in 1961. The Government intends to bring it down to the rate of 50 deaths per 1,000 children from the rate of 161 deaths per 1,000 children in 1961.

43. Due to the high population growth of over 3 per cent and a declining death rate due to the improved health care system, life expectancy has risen from 35 years to an average of 50 years. This is also attributed to a great improvement in socio-economic life. The Government, through the creation of a Department of the Environment under the Vice President's Office, intends to ensure that environmental issues receive top priority. This will further impact positively on the life expectancy of the general population.

44. Arbitrary deprivation of life is not tolerated. The police and the security forces are prohibited from drawing and using firearms unless it is in self-defence or to prevent serious injury to some other person. Even in such cases they are not allowed to shoot to kill but only to prevent the escape of the suspects/criminals.

45. Recently there has been an increasing tendency to apply instant mob justice to armed robbers, dangerous criminals and sometimes to ordinary thieves. On several such occasions death has resulted. In most cases it was police officers who saved a lot of suspects from being punished by mob justice. The Government is doing all it can to educate the public that such activities are unlawful. Any person found responsible for inducing or causing such deaths is promptly brought to justice.

46. There are no cases of disappearances of persons in Tanzania.

47. Article 14 of the Constitution of the United Republic of Tanzania provides that every person has the inherent right to life and is entitled to get from the community protection of his life according to the law. However, as explained under article 4, derogation from this right is permitted by the Constitution under section 31 during a state of emergency and for confronting individuals who are believed to be conducting themselves in a manner that endangers or compromises national security. But the section goes on to put conditions and restrictions on the derogation in subsections (2) and (3) of section 31; this is to ensure that derogation is not done arbitrarily.

48. Tanzania still maintains capital punishment. The death sentence is imposed only after due process of the law. Capital punishment is reserved for the most serious crimes, i.e., murder and treason. Capital punishment is mandatory for crimes of murder while it is discretionary for treason.

49. There is a range of safeguards guaranteeing protection of those who face the death penalty, such as the right of appeal. The convicted person can appeal to the President to commute the sentence under section 325 (3) of the Criminal Procedures Act of 1985. All judgements in which the death sentence is passed are forwarded to the President together with notes of evidence taken during the trial, in accordance with section 325 (1) of the Criminal Procedure Act.

50. Other safeguards, like the right to a fair hearing by an independent tribunal, the presumption of innocence, minimum guarantees for the defence including the right to review by a higher court, are all prescribed in the Constitution. If all these safeguards fail the convicted person can finally appeal to the Prerogative of Mercy vested in the President who has the power, under section 45 (1) of the Constitution, to grant pardon, respite of substitution of a less severe punishment; this is also provided under section 325 (3) of the Criminal Procedure Act.

51. The Constitution provides that capital punishment shall not be applied to minors below 18 years, pregnant women or persons who are insane or otherwise of unsound mind.

52. Tanzania is not a party to the Second Optional Protocol which aims at the abolition of capital punishment. Tanzania appreciates the moral questions raised in the issue of capital punishment. For the time being, however, Tanzania considers that the punishment has a part to play in the society and intends to retain it. At the moment the Law Reform Commission has been entrusted with the responsibility of reviewing this aspect of the law.

Article 7

53. Section 13 (6)(e) of the Constitution of the United Republic of Tanzania prohibits torture and inhuman or degrading treatment or punishment. Where a person thinks he has been subjected to such treatment he may petition the High Court under section 30 (3) of the Constitution for relief. Recourse may also be sought under the decrees of certiorari and mandamus or with the Permanent Commission of Enquiry in cases of administrative abuses of authority.

54. Section 26 (1) of the Constitution of the United Republic of Tanzania requires all persons to comply with the laws of Tanzania, while section 26 (2) gives every person the right to institute proceedings for the protection of the Constitution and its laws.

55. Procedures pertaining to the arrest, search and detention of people as provided in the Criminal Procedure Act No. 9 of 1985 basically remain the same as reported in the second periodic report. This includes section 55 (1) of the Act which provides that persons under restraint shall be treated humanely and with respect for human dignity, while section 55 (2) provides that no person shall while under restraint be subjected to cruel, inhuman or degrading treatment.

56. The law relating to evidence under the Evidence Act No. 6 of 1967 also remains the same as discussed under article 7 of the second periodic report, that is, evidence obtained through involuntary means, i.e. induced through a threat, a promise or other prejudice by a police officer, would not be admissible in court.

57. In the second periodic report it was reported that it was not normal for detainees to be held incommunicado in Tanzania. People are normally detained in police stations and remand jails while waiting to appear in courts. People who are held under the 1962 Preventive Detention Act as amended in 1985 may be

held incommunicado for some periods. The periods may not extend beyond two weeks and the names of the detainees have to be published in the Official Gazette. Visitation rights are granted to relatives.

58. Under the Preventive Detention Act the President has powers to detain a person who in his opinion is conducting himself, or to prevent him from conducting himself, so as to be dangerous to peace and good order in any part of Tanzania or to the security of the State. A 1985 amendment allows the detainee to challenge the detention order in a court of law and if a detainee is not informed of the grounds of his detention within 15 days, section 5 provides for his immediate release. The duration of the detention pericd is not specified under the Act.

59. The main criticism against this legislation is that it gives too much power to the President to do whatever he likes with the life and freedom of detainees. The likelihood of abuse of such power is considerable since sometimes regional commissioners and district commissioners have abused those powers under the Act. Another criticism has been that the law has been used to silence political activists. However, the 1985 amendment provides the detainee with the right to challenge his detention in a court of law and win his release. Furthermore, the introduction of a multiparty political system has rendered the likelihood of using the legislation against political opponents very remote. Law enforcement officers strongly recommend retaining the legislation to combat dangerous criminals and the increasing problem of illicit drugs-trafficking. The Nyalali Commission has recommended the repeal of the legislation. It has been referred to the Tanzania Law Reform Commission for consideration and recommendations.

60. Tanzania does not expel persons to countries where they are likely to be subjected to torture. However, Tanzania has several extradition agreements with most of its neighbours. Under these treaties Tanzania is obliged to return fugitive criminals who are running away from justice in their countries after committing criminal offences. Political activists are excluded from these extradition arrangements.

61. Corporal punishment is still being administered in Tanzania. It dates back to the colonial days under the Corporal Punishment Ordinance, Cap. 17 of 1930. It was mandatory for certain offences in those days. It was abolished under the Minimum Sentences Act of 1972 but brought back in 1989, and it is allowed under section 28 of the Penal Code, Cap. 16, of the Laws. However, it is only administered in cases of violent offences such as rape and robbery with violence.

62. Under the law corporal punishment is not to be inflicted on women or males over 45 years old; it may not be inflicted publicly. Other laws that allow corporal punishment are the Prisons Act No. 34 of 1967 which allows the senior prisons officer to punish any prisoner found guilty of a major prison offence with a cane, pursuant to section 33 (3) of the Act. Under section 60 (1)(c) of the Education Act No. 25 of 1978 the Minister of Education is empowered to make regulations to provide for and control the administering of corporal punishment in schools.

63. Public opinion is divided on the administration of corporal punishment. The Nyalali Commission has recommended to the Tanzania Law Commission to look into the appropriateness of maintaining corporal punishment.

64. In Tanzania there is no experimentation of human beings. The only law available under the Criminal Procedure Act No. 9 of 1985 is section 63 (1) which provides that a magistrate may allow a medical officer to examine a person in lawful custody in respect of an offence or may allow a medical officer to take and analyse a specimen from such a person if he has reasonable grounds to believe that the examination or analysis would provide evidence relating to the offence.

Article 8

65. Slavery and the slave trade do not exist in Tanzania. Sections 254 and 255 of the Penal Code provide that it is an offence under the law. Section 254 provides that any person who imports, exports, removes, buys, sells, or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave is guilty of a felony and is liable for imprisonment for seven years. Section 255 further provides that any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for 10 years.

66. Forced labour is prohibited under section 25 (2) of the Constitution of the United Republic of Tanzania and under section 256 of the Penal Code. Exceptions as allowed under the Covenant are also expressly provided for under section 25 (3) of the Constitution. Section 256 of the Penal Code provides that any person compels another person to labour against his will is guilty of a misdemeanour.

67. The Human Resources Deployment Act No. 6 of 1983, popularly known as the "Nguvu Kazi Act", establishes a machinery designed to regulate and facilitate the engagement of all able-bodied persons in productive work. This legislation has been criticized as comprising elements encouraging forced labour.

68. Sections 13 to 16 of the Act provide powers to the Minister to take a census of all people, identify the unemployed and unproductive workers and make arrangements for coordinated transfer and subsequent employment of unemployed residents. Sections 26 and 27 of the Act grant the Minister wide powers to arrange for the deployment of persons charged or convicted of being idle, disorderly, rogues and vagabonds.

69. Some local government authorities who have been granted authority to implement the Act have arrested, detained and prosecuted people under the Act. Some by-laws have been passed by some local government authorities to provide for the cultivation of a certain specified minimum acreage of food or cash crops. Although it is rarely in use nowadays, the Act was used extensively in the mid-1980s. The Nyalali Commission found that the Act curtails the right of choice of work, allows arrests and detentions without trial, and encourages forced labour. The Nyalali Commission has recommended the repeal of this law.

Articles 9 and 10

70. Section 15 (1) of the Constitution of the United Republic of Tanzania provides that a person's freedom is inviolable and that every person is entitled to his personal freedom. Section 15 (2) provides further that no person shall be subject to arrest, restriction, detention, exile or deprivation of his liberty in any manner, save in certain circumstances and subject to a procedure prescribed by the law or in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted, or upon reasonable suspicion of his having committed a criminal offence.

71. Consequently, such exceptions are as provided in the Criminal Procedure Act No. 9 of 1985. These are provisions relating to arrest, bail and detention. They remain the same as described in the second periodic report.

72. Following some recent allegations in the press concerning substandard conditions in one of the remand prisons in Dar es Salaam in relation to health and food, as well as the mixing of juvenile and adult offenders, the Prime Minister of the United Republic of Tanzania made a surprise visit to the remand centre to check on the allegations. He found that the allegations were unfounded, the only shortcoming being that sometimes there was a lack of some necessities due to the financial constraints facing every department of the Government.

Articles 11 and 13

73. Tanzanian practice differs from the provisions of article 11 of the Covenant. Under section 44 (1) of the Civil Procedure Code, Act No. 49 of 1966, a judgement debtor may be arrested in the execution of a decree at any hour and on any day and shall as soon as practicable be brought before the court which may order his detention. There is no discrimination between citizens and aliens; both will be liable under this provision.

74. Aliens are granted the same protection as citizens pursuant to section 13 (1) of the Constitution of the United Republic of Tanzania. The section provides that all persons are equal before the law and are entitled without any discrimination to equal opportunity before and protection of the law. Subsections (2) and (4) of the same section provide that no legislative authority in Tanzania shall make any provision in any law that is discriminatory either of itself or in its effect and that no person shall be treated in a discriminatory manner by any person acting by virtue of any law in the discharge of the functions of any State office or party and its organs.

75. Under section 29 (1) of the Constitution all residents in the United Republic of Tanzania are entitled to enjoy the basic human rights and share in the result of the discharge by every person of his duty to society. Under section 29 (2) aliens are entitled to a fair and public hearing by the courts and are free from arbitrary and unlawful interference with their privacy, family, home or correspondence.

76. Provisions of the basic rights in the Bill of Rights apply to aliens. They are not to be subjected to torture or to cruel and degrading punishment

or to be held in slavery and servitude. When lawfully deprived of their liberty they are to be treated humanely and with respect for the inherent dignity of their person. Like any Tanzanian citizen an alien is entitled under section 19 (1) to freedom of thought, conscience and religion. The rights extend to the rights of privacy and personal security under section 16 (2) of the Constitution.

77. Information about the Immigration Act No. 8 of 1972, with respect to residents' permits, prohibited immigrants, their expulsion, deportation orders, etc. remain the same as provided in the second periodic report.

78. There are several legislations criticized as operating contrary to article 12 (1) of the Convention, i.e. they curtail the freedom of movement and residence. Under the Witchcraft Ordinance of 1928, Cap. 28, of the Laws, which dates back to the colonial period, the executive authorities can arrest and detain a suspected witch or person practising witchcraft, or restrict such person to residence in a particular district or region only.

79. The Deportation Ordinance, Cap. 38, as amended by Act No. 3 of 1991, allows the President to deport a person concerning whom there is proof that he is conducting himself in a manner deemed as dangerous to the peace and good order of the country or who is endeavouring to excite enmity between the people and the Government. The law allows his deportation to any other part of the country. If he returns he is liable to imprisonment and a fine or to redeportation.

80. The Nyalali Commission has recommended the repeal of both these laws as outmoded and unconstitutional. They are currently being examined by the Tanzania Law Reform Commission.

Article 14

81. Organization of the judiciary is provided under chapter 5 of the Constitution of the United Republic of Tanzania. The President appoints the Chief Justice under section 118 (2); the Chief Justice is the head of the Court of Appeal and of the judiciary. The Court of Appeal is established under section 117 (1) while the judiciary is defined under section 116 as consisting of the Court of Appeal, the High Court, together with all other courts subordinate to the High Court.

82. Under section 118 (3) the President of the United Republic of Tanzania appoints other Justices of Appeal in consultation with the Chief Justice from amongst persons qualified for appointment as Judges of the High Court of Tanzania or Zanzibar.

83. Judges of the High Court, which is headed by the Principal Judge of the High Court, are appointed by the President after consultation with the Judicial Service Commission under section 109 (1) of the Constitution of the United Republic of Tanzania. The Judicial Service Commission is formed under section 112 (1) of the Constitution and comprises the Chief Justice, who is the Chairman of the Commission, the Attorney-General, a judge of the Court of

Appeal appointed by the President in consultation with the Chief Justice, the Principal Judge of the High Court and two other members appointed by the President.

84. Judicial independence is guaranteed through the security of tenure of the judges of both the High Court and the Court of Appeal. Though their appointment is subject to presidential approval, once appointed judges are free to discharge their legal duties without fear or favour since they cannot be removed from office save for inability to perform their duties or for misbehaviour or inability to discharge their functions owing to physical or mental infirmity.

85. Judges must have specified qualifications so as to be appointed to the office of Judge of the High Court or Justice of Appeal of the Court of Appeal of Tanzania under sections 109 (8) and 118 (3) of the Constitution. The specified qualifications constitute professional qualifications prescribed by the Advocates Ordinance or any law amending or replacing that Ordinance, the possession of which is a prerequisite for enrolment as an advocate in Tanzania or Zanzibar. The person must have held the specified qualification for a period of not less than five years under section 109 (7) of the Constitution. The President can, however, dispense with the five-year requirement and appoint under section 109 (9) a person having held the specified qualifications for a period of less than five years where it appears in his wisdom, after consultation with the Chief Justice, that by reason of special circumstances the person is capable, worthy and suitable for appointment as a judge of the High Court.

86. Under section 120 (2) of the Constitution, Justices of Appeal may retire voluntarily at the age of 60. Section 120 (1) compels them to retire at the age of 65. Judges of the High Court are required to retire at the age of 60 under section 110 (1); they may retire voluntarily at the age of 55 under section 110 (2) of the Constitution.

87. Section 110 (6) provides the procedure for removal of a Justice of Appeal or a judge from the bench. Under the procedure the President is required to form a commission composed of a chairman and not less than two other members, at least half of whom are persons holding the office of Judge of the High Court or Judge of the Court of Appeal in a Commonwealth country. The commission investigates the matter and reports its findings to the President. The President will remove the judge from the office only on advice given by the commission.

88. Emoluments paid out to judges are paid out of the Consolidated Fund and hence they are not subject to debate by Members of Parliament in the National Assembly.

89. Under the Court of Appeal and the High Court are district and resident magistrates courts and primary courts staffed by district and resident magistrates and primary court magistrates respectively. Section 113 (1) of the Constitution vests powers of appointment, promotion and discipline of the magistrates and other judicial officials in mainland Tanzania in the President of the United Republic of Tanzania. The President has delegated these powers to the Judicial Service Commission established under section 112 (1).

90. Resident magistrates are appointed to their posts after graduating with Bachelor of Laws degrees from a recognized university and having undergone a one-year internship with the Attorney-General's Chambers. District magistrates are not university graduates. They are promoted on the basis of their experience in the judiciary as primary court magistrates or chief clerks and after successfully pursuing a one-year ordinary diploma in Law. Primary court magistrates are given a nine-month training in basic law at the Institute for Development Management in Morogoro.

91. Military tribunals are for military personnel only. However, appeals against decisions made by courts-martial lie with the High Court when it sits as a Courts Martial Appeal Tribunal. This ensures that normal standards of justice are adhered to.

92. Other specialized tribunals are the Rent Tribunal which resolves disputes involving the fixing of rent and other matters relating to housing. The Industrial Court of Tanzania deals with the administration of labour laws and adjudication of industrial disputes.

93. There are some general provisions in the Constitution which give regard to the rights of all persons to a fair hearing. Section 29 (2) of the Constitution of the United Republic of Tanzania provides that all people are equal before the law and are entitled to equal opportunity, before and protection of the law. Section 13 (3) further provides that the civil rights, obligations and interests of every person and those of society shall be protected and determined by competent courts of law and other legally established State agencies.

94. Section 13 (6) of the Constitution provides for the right to a fair hearing by courts of law where one's rights and obligations are being determined. The section also guarantees the right of appeal to superior courts or tribunals and other legal remedies against decisions of the courts. Section 15 (2) provides that so as to safeguard a person's right to freedom it is prohibited for any person to be arrested, detained, imprisoned, forcibly removed or deprived of his freedom except if under the due process of the law or in the execution of an order or court judgement after being found guilty of a criminal offence.

95. Section 186 of the Criminal Procedure Act No. 9 of 1985 provides for open courts to which the public has access unless the presiding judge or magistrate considers that publicity would be prejudicial to the interest of justice, defence, public order or morality or to the welfare of juvenile persons or the protection of the private lives of persons concerned in the proceedings.

96. All the guarantees that exist in law and practice with regard to the right of all persons to receive a fair and public hearing remain the same as provided in the second periodic report.

Articles 15 and 16

97. The Constitution of the United Republic of Tanzania expressly prohibits retroactive penal legislation. Section 13 (6) of the Constitution provides

that it is prohibited for a person to be punished for an act which when it was committed was not an offence under the law, and it is also prohibited to impose or substitute a heavier punishment for the one which existed when the offence was committed.

98. Section 12 (1) and (2) of the Constitution recognizes the equality of all people and that every person deserves respect and recognition of his dignity.

Article 17

99. Section 16 (1) of the Constitution of the United Republic of Tanzania provides for the right to privacy and personal security. It provides that every person deserves respect and is entitled to personal protection together with his family and home. The protection is extended to his private communication. However, section 16 (2) of the Constitution provides that so as to preserve the protection and security provided in this provision authorities in the country will establish legal regulations which will determine the conditions and extent to which a person's right to his privacy and personal security could be interfered with without jeopardizing the provisions of this section.

100. The exceptions provided under section 16 (2) include, for example, the opening of personal parcels by postal authorities under the East African Customs and Transfer Tax Act of 1970 read together with the Customs and Excise Duty Act No. 19 of 1977. The inspection, carried out by authorized customs officers, is of parcels suspected of containing contraband.

101. The Criminal Procedure Act No. 9 of 1985 ensures that an arrest can be made after an arrest warrant has been produced under section 13 and a search is conducted after an officer provides a search warrant under section 24. Section 14 provides for situations where a police officer can make an arrest without producing a warrant, i.e. arresting a person found with objects which might reasonably be suspected to have been stolen, or a person who wilfully obstructs a police officer in the execution of his duty.

102. Section 24 of the Criminal Procedure Act provides that a police officer can conduct a body search when arresting a suspect. However, decency is to be observed in the searching of women; under section 26 the search has to be conducted by another woman. The term "family" in Tanzania has a wider scope than the traditional family of a person, his wife and children, and also incudes the extended family of uncles, aunts, nieces, etc. However, a "family" or "home" does not include a homosexual union of any type whatsoever.

103. However, as discussed under article 6, it is allowable under section 31 (1) of the Constitution of the United Republic of Tanzania for the Parliament to take, during an emergency or during ordinary times, measures that derogate from the inviolability of freedom in relation to individuals who are believed to be conducting themselves in a manner that endangers or compromises national security.

104. As reported in the second periodic report, due to the infancy of computerization in Tanzania there are no data banks on personal information, hence there is no unauthorized interference in the private lives of the people in that respect.

Article 18

105. Section 19 (1) of the Constitution of the United Republic of Tanzania provides that every person has the freedom of thought, conscience and religion together with the freedom to change his religion and conscience. Section 19 (2) further provides that without breaking the relevant laws of the United Republic propagating religion, praying and disseminating information on religion will be done freely by individuals and the organizing of religious activities shall be outside the domain of State authorities.

106. The population of Tanzania could roughly be divided as one third Muslim, one third Christian and one third people of other religions and those who do not follow any religion or believe in their tribal traditions. But the fact is that Tanzania remains a secular State where there is a growing culture of complete acceptance by the population of the freedom of thought, conscience and religious worship and of the equality of all religions. All these religions generally coexist peacefully.

Article 19

107. Section 18 (1) of the Constitution of the United Republic of Tanzania provides that without affecting or breaking the laws of the country every person is entitled to freedom of opinion and expression. This freedom entails the right to freely hold and express opinions and to seek, receive and impart information and ideas through any media as well as freedom from interference with correspondence or means of communication.

108. Section 18 (2) provides that every citizen has the right to get information all the time on events which are happening in the country and the world which are important to the lives of people and on activities and events important to the society in general.

109. In Tanzania there is one government-owned daily newspaper. As reported in the second periodic report a very strong private press has emerged. Publications have been increasing each year. In 1992, 14 publications were registered, in 1993, 50 publications were registered, in 1995, 39 publications were registered. This brings the newly registered publications to a total of 125. Most of them are in the Kiswahili language which is the national language and understood by almost all the people in the country.

110. Most of these publications are more famous for having editorials opposing the official government stand. The Government allows their export to foreign countries. Since the enactment of the Newspaper Act No. 3 of 1976 the Government has allowed the importation and distribution of foreign newspapers in Tanzania.

111. The Government owns two radio stations, one for the mainland and one for Zanzibar. The Zanzibar Government controls one television studio owned by the

Zanzibar Government. Similar to the print media, the Government has allowed people to establish radio and television broadcasting stations throughout the country. Three privately owned radio stations and three television stations have been established in the region of Dar es Salaam. The television stations run their programmes freely without any interference from the State. The Government has plans to establish its own television station. Individuals are still applying to establish radio and television stations throughout the country.

112. Some journalist associations have criticized the 1976 Newspapers Act for providing unfettered discretionary powers to the Minister as well as creating some offences against the Republic which they claim violate some basic human rights and freedoms, i.e. freedom of the press, opinion and expression. The Commission on the Democratic System in Tanzania (Nyalali Commission) has recommended that the Tanzania Law Reform Commission has recommended that the Tanzania Law Reform Commission examine those provisions with the aim of proposing appropriate amendments.

Article 20

113. Article 9 (g) of the Constitution of the United Republic of Tanzania provides that State authorities and agencies are to direct their policies and activities towards ensuring that the Government and all public institutions provide equal opportunities to all citizens, men and women alike, irrespective of colour, race, tribe or religion or station in life. Article 9 (h) further provides for all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism to be eradicated.

114. Incitement to violence is a criminal act under section 63 A of the Penal Code, chapter 16 of the Laws of Tanzania. Under section 63 (b) inciting discontent and ill-will for unlawful purposes is a crime. Advocacy of national or religious hatred constituting incitement to discrimination, hostility or violence are acts of incitement to violence and are therefore declared criminal.

115. Since independence in Tanzania the Government has ensured that matters of religion and State are kept separate and its citizens are encouraged to exercise religious tolerance. Government and religious leaders have scrupulously maintained this separation. During the reporting period a group of religious fanatics went on a rampage in the city of Dar es Salaam and burned down several butcher shops claiming that the shops sold pork, which was against their religion. The Government moved swiftly and arrested them, they were tried, found guilty, convicted and imprisoned for offences under the Penal Code.

116. Tanzania has always maintained friendly and cordial relations with all its neighbours, save only for a brief period in 1979 when it went to war with the aggressor forces of former President Idi Amin of Uganda. There is no specific legislation expressly outlawing propaganda for war. However, Tanzania has made it very clear to the hundreds of thousands of refugees coming into Tanzania from Rwanda and Burundi that Tanzania shall not be used as a launching pad for military attacks on neighbouring countries.

All refugees are normally disarmed before being allowed into the country. They are informed that no kind of military training or propaganda for genocide or war shall be entertained while on Tanzanian soil.

Article 22

117. Section 20 (1) of the Constitution of the United Republic of Tanzania provides that every person is entitled to freedom of peaceful assembly, association and public expression. In the exercise of this right people are entitled to assemble freely, to associate with other persons and to form or belong to organizations and associations for the purposes of protecting or furthering their common interests.

118. Opportunities for the people to use the freedoms of assembly, association and public expression have been further widened in the political field after the institution of a multi-party system in Tanzania. On the recommendation of the Presidential Commission on the establishment of the multi-party system in Tanzania of 1992, Tanzania removed from its Constitution all those articles which provided that the United Republic of Tanzania is a single-party State. As a result the necessary amendments were made to the Constitution so as to allow the institution of multi-partism. At the beginning 23 political parties applied for registration in preparation for the run-up to the parliamentary and presidential elections of October 1995. Out of these, 13 political parties attained full registration after fulfilling the required conditions.

119. On civil organization, the Organization of Tanzania Trade Unions Act of 1991 establishes the Organization of Tanzania Trade Unions (OTTU) as the umbrella representative of all Tanzanian workers. It provides for the deregistration of the Jamuiya ya Wafanyakazi wa Tanzania or JUWATA Act of 1979, which was formerly affiliated with the ruling party. The ruling Chama cha Mapinduzi decided to remove JUWATA from the list of mass organizations. JUWATA was then converted to an autonomous trade union movement, the Organization of Tanzania Trade Union.

120. In this respect the Permanent Labour Tribunal Act No. 41 of 1967 was amended by Act No. 3 of 1990. The Act establishes the Permanent Labour Tribunal to make further and better provision for the settlement of labour disputes by negotiation and conciliation. The Tribunal was also intended to amend certain laws relating to disputes in the civil service and local government service. After the amendment of the Industrial Court of Tanzania Act No. 3 of 1990 the Permanent Labour Tribunal is now referred to as the Industrial Court of Tanzania. The Act provides certain conditions that have to be fulfilled before a lockout or a strike may take place.

121. Section 20 (1) of the Constitution of the United Republic of Tanzania provides that, without contravening the laws of the land, every person is entitled to freedom of assembly and association. However, administrative measures have been taken to ensure that such gatherings are peaceful. There have been instances whereby stone-throwing and riotous behaviour have been experienced after leaders of some political parties had addressed their supporters in some towns in the country. In those instances people were injured and property destroyed by riotous crowds.

122. It is therefore required that official permission be sought beforehand from the Government for the holding of any procession, meeting or rally. This is to ensure that the Government provides police officers to ensure that there is peace and security so that the meetings or public processions proceed peacefully with security being assured. Offenders are liable to find themselves facing criminal charges under chapter 9 of the Penal Code of Tanzania, Cap. 16 of the Laws of Tanzania concerning unlawful assemblies and riots and other offences against public tranquillity.

123. The Societies Ordinance of 1954, Cap. 337, of the Laws of Tanzania lays down conditions and procedures for the registration of civil societies in Tanzania. Before the reintroduction of the multi-party system in Tanzania this ordinance also guided the registration of political parties. This responsibility is now vested in the National Electoral Commission. It has been argued that the President of the United Republic of Tanzania, the Minister of Home Affairs and the Registrar of Societies are vested with wide discretionary powers under the Societies Ordinance. The Nyalali Commission recommended amendment of some of the provisions of the Ordinance which seem to conflict with the Constitution.

Article 24

124. Article 12 (1) of the Constitution of the United Republic of Tanzania in its general terms also covers the child when it provides that all people are born free and equal. Section 12 (2) goes on to provide that every person is entitled to recognition and respect for his dignity. Article 13 (1) provides that all persons are equal before the law and are entitled without any discrimination to equal opportunity before the law and equal protection of the law; this also extends to the child. The same is true for article 13 (5) of the Constitution which prohibits discrimination on grounds of race, colour, sex, language, religion, national or social origin, property or birth. Being provided with special status, a child has always been protected by society and the State. The family will also accord the same protection.

125. The Registration of Births and Ordinance, Cap. 108, of the Laws of Tanzania provides under section 11 that every child born alive shall be registered by his father and mother or a person in the household within three months of the birth. Under the Citizenship Act of 1961 a child born in Tanzania attains the citizenship of Tanzania by birth. The Government is in the process of establishing the first juvenile court in Dar es Salaam. Finances allowing, these will be established elsewhere. Generally, juveniles are brought in normal courts. There are several approved schools for juvenile delinquents. In remand centres great care is taken to separate juvenile offenders from adult offenders.

126. Under the National Defence Act No. 24 of 1966, Tanzania ensures that children do not take part in armed conflicts. Section 29 (4) of the Act provides that no person under the apparent age of 18 years shall be enrolled in the defence forces without the consent of his parents or guardian. If the parents are dead or unknown then the area commissioner of the district in which the person resides has to give consent.

127. Under the Children and Young Persons Ordinance, Cap. 13, of the Laws of Tanzania, a child means a person under the age of 12 years and a young person means a person who is 12 years of age but under the age of 16 years. Under this Act no child shall be sentenced to imprisonment. The Act establishes juvenile courts where children and young offenders are committed to reform schools.

128. Under the Employment Ordinance of Tanzania, Cap. 366, of the Laws, it is provided under section 77 (1) that no child under the apparent age of 12 shall be employed in any capacity whatsoever. Any person who employs a child under the age of 12 shall be guilty of an offence under the Ordinance.

129. In Tanzania a child is considered an adult for purposes of article 10, paragraphs 2 and 3, of the Covenant when he attains the age of 18 years. Under the Penal Code of Tanzania a child under seven years is not criminally responsible for any act or omission. A child under the age of 12 years is not criminally responsible for an act or omission unless it is proved that at the time of the act or omission the child had capacity to know that he ought not to do that act or make the omission.

130. The problem of abandoned children is mainly found in cities and towns. The society in rural areas will generally not allow a situation where a child could be left to fend for himself. In cities and towns the breakup of marriages is the main reason for the increasing numbers of street children. Another reason is abandonment of children after parents fail to care for them. In rare cases children run to the streets after the death of both parents and lack of a person willing to take care of them.

131. In such cases the Government has responsibility to provide care through the Ministry of Labour and Youth Development working together with the Ministry of Community Development, Women and Children. The Government also coordinates with various non-governmental organizations to provide such children with food, shelter, health care, clothing, education and counselling. The Government works hand in hand with the NGOs so as to ensure that the children obtain the necessary help to build a firm base for their development as well as that of the nation.

Article 25

132. The Constitution of the United Republic of Tanzania under section 20 (1) provides that subject to the laws of the land every person is entitled to freedom of peaceful assembly, association and public expression.

133. This provision of the Constitution also allows the formation of political parties which were not allowed prior to 1992 when the law allowed only the Chama cha Mapinduzi as the sole political party. Although article 20 (1) existed before the reintroduction of multi-party politics in Tanzania, it was not very useful to political parties as they were not allowed under the single-party system. The repeal of section 3 of the Constitution, which provided that Tanzania was a single-party State, and section 10, which provided that all political activity was to be carried out under the auspices

and control of the ruling party, has enabled the provision of article 20 (1) of the Constitution to have the intended meaning, particularly with respect to the operation of political parties in the country.

134. The right to vote is guaranteed under the Constitution of the United Republic of Tanzania. Section 5 (1) provides that every Tanzanian who has attained the age of 18 years has the right to vote in the general elections in Tanzania.

135. Section 5 (2) provides that the National Parliament can impose conditions which could prevent a citizen from exercising his right to vote due to any of the following reasons: if he is a citizen of another country, is of unsound mind, has been convicted of certain criminal offences, fails to prove age, citizenship or registration as a voter.

136. The right to be represented by freely chosen representatives is ensured by the Constitution of the United Republic of Tanzania under the third chapter of the Constitution. The second part of that chapter provides for the election of Members of Parliament in their constituencies. The Election Act No. 6 of 1992 provides for both parliamentary and presidential elections. Elections are held every five years in Tanzania, the last one being held in October 1995. The universal and equal suffrage elections are conducted by secret ballots, thereby guaranteeing the free expression of the will of the electors.

137. The Constitution of the United Republic of Tanzania provides under section 21 (1) that all citizens have the right to participate in the governance of the country either directly or through their freely chosen representatives, in accordance with the procedure provided under the law. Subsection (2) goes on to provide that every citizen has the right and is free to make decisions regarding his life, his affairs, or concerning his nation's affairs.

138. One of the opposition political leaders, Reverend Christopher Mtikila, petitioned the High Court after being refused by the National Electoral Commission to stand as a private presidential candidate. Reverend Mtikila's political party, the United Democratic Movement, had been refused registration on grounds that it did not meet conditions for registration of political parties as required by Act No. 5 of 1992, i.e. by its policy which openly advocated the breaking-up of the union with Zanzibar. Adherence to the preservation of the union is one of the preconditions for registration provided in the Constitution.

139. In its decision, which was delivered on 24 October 1994, the High Court of Tanzania held that following the interpretation of article 21 (1) of the Constitution of the United Republic of Tanzania it would be lawful for a private candidate without the backing of his party to stand as an independent private candidate for presidential, parliamentary or local council elections. In the meantime, a constitutional amendment barring private candidates has been passed by the Parliament.

140. In another case concerning elections under the multi-party system the Court of Appeal of Tanzania gave some clarification on a section of the

Constitution which seems to deny the jurisdiction of the court. In that case Dr. Aman Walid Kaborou of the Chama cha Demokrasia Tanzania, or CHADEMA, had successfully petitioned against Mr. Azim Selemani Premji, candidate of the ruling Chama cha Mapinduzi. Dr. Kaborou sought and succeeded in nullifying the victory of Mr. Premji in the parliamentary by-election held in the town of Kigoma in western Tanzania. Dr. Kaborou instituted an election petition under section 108 of the Elections Act, 1985 as amended by the Election (Amendment) Act 1992. There were four other political parties which fielded candidates to contest the by-election in Kigoma where Mr. Premji had been elected as a new MP for Kigoma urban constituency.

141. In its judgement of 11 August 1994 the High Court of Tanzania granted the petition and declared the election null and void. The Government, together with Mr. Premji and Radio Tanzania, appealed to the Court of Appeal of Tanzania, the grounds of appeal being that the High Court had erred in finding that there had been some corrupt practices in the campaign, that government leaders had carried out illegal campaigns for Mr. Premji, and that Radio Tanzania broadcasts had affected the results of the elections.

142. The Court of Appeal, in its judgement of 28 December 1994, upheld the High Court's decision. In delivering its judgement it gave some clarification on the section of the Constitution referred to above. Section 74 (12) of the Constitution of the United Republic of Tanzania (in the section on Parliamentary Elections) provides that "No court shall have jurisdiction to inquire into anything done by the Electoral Commission in the exercise of its functions according to the provision of this Constitution."

143. The Court held that, on the face of it, it appeared that the provision expressly prohibited the courts from inquiring into the validity of some provisions, but deeper consideration of the principles underlying the Constitution revealed that such an interpretation was wrong. The Court held that one of the fundamental principles of any democratic Constitution, including that of Tanzania, is the rule of law. The Court held that the principle was obvious and elementary in a democracy and that it does not have to be expressly stated in a democratic constitution.

144. The Court further referred to article 26 (1) of the Constitution of the United Republic of Tanzania which provides that "Every person is obliged to comply with this Constitution and the Laws of the United Republic." In the light of this provision the Court held that section 74 (12) of the Constitution cannot be interpreted so as to protect unconstitutional or illegal acts or deeds of the National Electoral Commission from inquiry by the courts of law.

145. The Court further held that protection from inquiry by the courts applies only to acts or deeds made according to the Constitution or the relevant law. It follows, therefore, that any act or deed made contrary to the Constitution or the relevant law is subject to review or inquiry by the appropriate courts of law. It makes no difference whether the National Electoral Commission has a chairman and vice-chairman who are Justices of the Court of Appeal. What counts is the principle of the rule of law. Under this principle nobody is above the law of the land and, similarly, nobody is authorized to act unconstitutionally or illegally.

Conclusion

146. The Government of the United Republic of Tanzania has listened to the recommendations made by the Nyalali Commission on various legislations which, according to the Commission, need to be repealed or amended. However, before making any move the Government is awaiting the recommendations of the Tanzania Law Reform Commission. The Commission has been entrusted with the task of thoroughly going through all those legislations and to come out with its own recommendations.

147. In this third periodic report the main progress to note is the transformation which Tanzania has undergone from being a single-party State to a multi-party State. This will be a major contribution to the improvement of the human rights situation as well as the expansion of democracy in the country. In the field of human rights the Constitution of the United Republic of Tanzania guarantees freedom of peaceful assembly, association and public expression, in particular the right to form or belong to organizations or associations for the purpose of protecting or furthering the interests of the people.

148. As far as improvements in the field of democracy is concerned, there was a belief that under the single-party system democracy was constrained. This was because non-party members were denied the opportunity to participate in political affairs. The institution of the multi-party system will now provide those people with the chance to participate by joining or forming parties of their own choice. Everyone is eager and optimistic to see the new system work. The Government is particularly determined to ensure that the new system works based on the principles of the rule of the law under the Constitution.